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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CABLEVISION SYSTEMS CORP. and
CSC HOLDINGS, LLC,

Plaintiffs,

v.

VERIZON COMMUNICATIONS INC. and
VERIZON NEW YORK, INC.,

Defendants.

Case No. 15 Civ. 456-LDW-GRB

FIRST AMENDED COMPLAINT

Plaintiffs Cablevision Systems Corp. and CSC Holdings, LLC (collectively, “Cablevision”) bring this claim for false advertising and related claims against defendants Verizon Communications Inc. and Verizon New York, Inc. (collectively, “Verizon”), and allege as follows:

INTRODUCTION

1. Cablevision brings this action to stop and redress false claims Verizon is making in a new advertising campaign—being disseminated in multiple television and radio commercials broadcast in the New York metropolitan area and over the Internet—falsely claiming that Verizon’s WiFi service is “the fastest WiFi available” from any provider.

2. Verizon purports to base its false “fastest WiFi available” claim on a new so-called AC1750, 802.11ac router it has begun installing throughout its network. Indeed, on its website, Verizon has represented that it offers the “fastest Wi-Fi router available from any provider.”

3. Verizon's fastest WiFi claim is false. Verizon's router cannot give Verizon the “fastest” speed Verizon claims because—as Verizon is well aware—Cablevision also offers AC1750, 802.11ac routers to its customers within the same area of service. Cablevision not only has offered this router to its customers for nearly a year, but it does so for free, whereas Verizon charges customers as much as \$199.99 for its new router.

4. Verizon's fastest WiFi claim is false for other reasons as well. For example, Verizon has asserted in radio, TV, and internet advertising that its “fastest WiFi” claim is “based on” test results from a study comparing routers it calls the “2014 Intertek router study” (the “Router Study”).

5. Before filing the present action, Cablevision demanded that Verizon provide it with a copy of the Router Study, but Verizon declined to do so. Cablevision repeated its demands for the study after bringing this action, including through a motion for expedited discovery. After appearing in Court, Verizon finally produced the Router Study to Cablevision's attorneys, on a confidential basis, on February 9, 2015. A copy of the Router Study is attached as Exhibit A.

6. The reason for Verizon's reluctance to provide the Router Study is self-evident from the Router Study itself. As suspected, the Router Study does not, and cannot, support Verizon's claim that its latest router offers the fastest WiFi available from any provider. That is so for at least three reasons.

7. [REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

10. Verizon's false claim of WiFi speed superiority – which finds no support in the Router Study despite Verizon's advertisements to that effect – is deliberately designed to undercut Cablevision's competitive WiFi advantage in the marketplace, and is likely to interfere with Cablevision's recent rollout of a new WiFi-only voice, text and data service.

11. Cablevision has introduced over 1.1 million WiFi hotspots throughout the tristate area, including this district, to ensure that Cablevision's internet customers receive state-of-the-art technology and capability both inside and outside the home. Verizon has no comparable outdoor WiFi service.

12. Building on this investment, Cablevision recently launched a new WiFi voice, text and data service called "Freewheel," which will allow its customers to communicate at a fraction of the cost now offered by Verizon and other cellular providers. This innovation poses a competitive threat to Verizon's cellular phone service.

13. The false ads in Verizon's campaign are designed to undermine the competitive threat Cablevision's WiFi services pose to multiple facets—both internet and cellular service—of Verizon's business. The Lanham Act, however, does not permit the

dissemination of such literally false advertisements, and entitles Cablevision to preliminary relief enjoining the dissemination of any Verizon advertisement or statement making the “fastest WiFi” claim.

PARTIES

14. Cablevision Systems Corp. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Bethpage, New York. Cablevision Systems Corp. is in the business of, among other things, providing cable service through its wholly-owned subsidiary CSC Holdings, LLC. CSC Holdings, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Bethpage, New York.

15. Upon information and belief, Verizon Communications Inc. is a Delaware corporation with its principal place of business at 140 West Street in New York, New York. Upon information and belief, Verizon Communications, either directly or through its subsidiaries and divisions, markets and provides telephone, internet and television services. Upon information and belief, Verizon Communications markets its services throughout much of the United States, including within this district and areas of New York where Cablevision competes.

16. Upon information and belief, Verizon New York, Inc. is a New York corporation with its principal place of business at 140 West Street in New York, New York. Upon information and belief, Verizon New York, Inc. is a wholly-owned subsidiary of Verizon Communications Inc. that provides local landline services in the New York area, including Verizon FiOS internet service.

17. Cablevision and Verizon are direct competitors in the provision of telephone, internet and television services, including within this district. Cablevision and

Verizon vigorously compete for subscribers within the coverage area served by both companies.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States); 15 U.S.C. § 1121(a) (action arising under the Lanham Act); 28 U.S.C. § 1367 (supplemental jurisdiction); and 28 U.S.C. § 1338(a).

19. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events giving rise to the claims occurred in this district, and under 28 U.S.C. § 1391(b)(1), in that Verizon is subject to personal jurisdiction in this district.

FACTS

Cablevision's WiFi Leadership

20. Cablevision is a leading telecommunications and media company that offers advanced digital television, voice, high-speed internet and WiFi services, among other entertainment and information products and services. Cablevision provides high-speed internet services to approximately 2.8 million households and businesses in the New York metropolitan area, including parts of Connecticut and New Jersey, under the brand name "Optimum Online."

21. In April 2014, Cablevision introduced the latest variant of its state-of-the-art "Optimum Smart Router." This newest Optimum Smart Router (hereinafter, the "Smart Router") operates on the IEEE 802.11ac wireless networking standard, which represents the latest generation of WiFi technology. Cablevision's Smart Router is also in a highly advanced tier of 802.11ac-enabled routers, the AC1750 tier. In addition to providing high-speed private WiFi service for each residence in which it is deployed, the Smart Router is also capable of functioning as a "hotspot" through which all Cablevision internet subscribers can access the

internet when in the area of the hotspot. Accordingly, every residential Smart Router is provisioned with both a private WiFi network and a WiFi hotspot accessible to other Cablevision internet subscribers.

22. Ever since its April 2014 rollout, Cablevision's latest Smart Router has been available to every Optimum Online subscriber free of charge.

23. Cablevision's Smart Router rollout was consistent with Cablevision's longstanding position as a leader in WiFi speed and accessibility. In addition to the Smart Router hotspots that are available through subscribers' residences, Cablevision also maintains hotspots in public places where consumers often wish to connect to WiFi, such as parks, restaurants, malls and public transit stations. Cablevision internet subscribers can access these WiFi hotspots seamlessly and at no extra charge.

24. In total, there are currently over 1.1 million Optimum WiFi hotspots located throughout Cablevision's footprint.

25. Cablevision's most recent innovation in WiFi access is its recently-launched "Freewheel" voice, text and data plan. The cutting-edge Freewheel service operates entirely via WiFi networks, obviating the need for a costly mobile data plan such as those provided by Verizon.

26. The Freewheel service was widely announced on Monday, January 26, 2015, garnering widespread press coverage, and became available to consumers on February 5, 2015. Media coverage of Cablevision's Freewheel announcement, including articles in the *Wall Street Journal* and *New York Times*, observed that Cablevision has spent years building and promoting its extensive WiFi network in the New York metropolitan region.

27. Cablevision's longstanding commitment to cutting-edge and innovative

WiFi services has been an important marketplace differentiator.

Verizon's Products

28. Verizon is among Cablevision's primary competitors. Verizon provides traditional telephone and DSL internet service, and since 2005 has provided internet, cellular telephone, and video service through its branded "FiOS" service.

29. Verizon has fallen far behind Cablevision in the provision of WiFi access, and does not provide customers with anywhere near the comprehensive WiFi solutions offered by Cablevision.

30. One example of Verizon's inferior WiFi service is its lack of any meaningful WiFi network in public places. Within the New York City metropolitan region, any WiFi hotspot access Verizon offers is not through its own network, but rather through licenses with third parties, and pales in comparison to the more than 1.1 million Optimum WiFi hotspots offered by Cablevision.

31. Moreover, while Cablevision's Optimum WiFi service is accessible across a variety of computer platforms and mobile devices, Verizon's website states that its WiFi hotspot service is available only on PC laptops and will not function on Macs or mobile phones.¹

32. Verizon has also lagged behind Cablevision in offering the latest WiFi technology to subscribers, and did not deploy its first 802.11ac-enabled router, the Quantum Gateway Router, until November 2014 – more than six months after Cablevision began to offer this next-generation WiFi device to its Optimum Online customers. Like Cablevision's latest Smart Router, the Quantum Gateway Router is an AC1750, 802.11ac device.

33. All AC1750 devices are identical in all material respects with regard to

¹ See <http://www.verizon.com/home/wifi-wireless-internet-service/> (accessed Jan. 29, 2015); <http://www.verizon.com/Support/Residential/internet/FiOSInternet/Networking/Setup/Wi-Fi/124650.htm> (accessed Jan. 29, 2015).

WiFi speed.

34. But there are differences in what Cablevision and Verizon offer with respect to their routers. While Cablevision's Smart Router is available to all Cablevision subscribers free of charge, Verizon's Quantum Gateway Router costs as much as \$199.99, or else a monthly service charge of \$9.99, for current Verizon subscribers.

35. Also unlike Cablevision's Smart Routers, Verizon's Quantum Gateway Routers do not create a publicly accessible network of hotspots for all Verizon internet subscribers.

36. Unable to compete with Cablevision's innovations in providing accessible, advanced, and affordable WiFi access to consumers, Verizon has instead resorted to a false advertising campaign that wrongly states that its Quantum Gateway Router provides consumers with the "fastest WiFi available from any provider, period."

Verizon's False Advertising Campaign

37. In January 2015, Verizon launched an advertising campaign targeting current and prospective Cablevision customers by falsely claiming to offer superior WiFi to Cablevision.

38. In at least three different television ads—entitled "Ice Cream Tasty," storyboard attached as Exhibit B; "Fast Speed," storyboard attached as Exhibit C; and "Get FiOS," storyboard attached as Exhibit D—a voice-over claims that Verizon FiOS offers "the fastest WiFi available from any provider." In "Fast Speed" and "Get FiOS," the voice-over is accompanied by a bright red on-screen banner that reads "Fastest Wi-Fi Available."

39. According to a disclaimer that accompanies the "fastest WiFi available" claim, it is "[b]ased on baseline maximum throughput speed results of 2014 Intertek router

study.”

40. Verizon has also broadcast this false claim over radio, in an ad titled “See How Great FiOS Is” that has aired on a New York City station since January 18, 2015 and is attached in transcript format as Exhibit E. During a voice-over, the ad states that “FiOS has the fastest WiFi available from any provider.”

41. In addition, on its website, Verizon has over the latest several weeks included various similar “fastest WiFi” claims tied to its “FiOS Quantum Gateway router,” including the claim that Verizon offers the “fastest Wi-Fi router available from any provider,” and that “The FiOS Quantum™ Gateway ... *lets you enjoy the fastest Wi-Fi available from any provider.*” As with its other advertising, Verizon has asserted that these claims are supported by the 2014 Intertek router study. Screen shots from Verizon’s website are attached as Exhibit F.

42. Verizon’s “fastest WiFi available” claim is literally false. Verizon and Cablevision both employ AC1750, 802.11ac routers that are identical in all material respects with regard to WiFi speed. In addition, the Router Study that Verizon has cited as proof of its “fastest WiFi available” claim does not – and cannot – support the claim.

The “Router Study” Does Not Support Verizon’s Claim

43. Verizon has advertised that the Router Study is the basis for its claim to offer the “fastest WiFi available from any provider,” making this an “establishment claim.”

44. That establishment claim is false because the Router Study does not support, let alone establish, the proposition that Verizon offers the fastest WiFi of any provider.

45. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. [REDACTED]

[REDACTED]

[REDACTED]

47. [REDACTED]

[REDACTED]

48. In short, the Router Study that Verizon claims as the basis for its “fastest WiFi” claim does not support the claim, and the claim is false.

Verizon Has Continued Its Ads Despite Knowledge Of Their Falsity

49. On January 23, 2015, Cablevision sent a letter to Verizon demanding that it withdraw its false advertisements, and explaining that the Cablevision Smart Router and the Verizon Quantum Gateway Router were identical in all material respects with regard to WiFi speed. Cablevision also requested that Verizon immediately provide Cablevision with a copy of the study on which the claim is purportedly based and a written response to Cablevision by no later than January 28, 2015.

50. The same day the letter was sent, in-house representatives of Cablevision and Verizon spoke on the phone. Cablevision’s representative explained that Verizon’s claim was false because the two providers’ routers are materially identical with regard to WiFi speed. Verizon’s representative defended the claims on the basis of the router study, but did not provide Cablevision a copy of the study, nor agree to discontinue the false advertising claims.

51. After the above deadline for a written response and copy of the Router Study passed, Cablevision initiated the present action and moved for expedited discovery of the

Router Study and related materials. The Court held a conference on February 5, 2015, and on February 9, 2015, Verizon finally turned over the Router Study to Cablevision.

52. As set out above, and as Verizon has long known, the Router Study provides no support for Verizon's claim that it offers the "fastest WiFi available from any provider."

53. In just the last few days following disclosure of the Router Study to Cablevision's lawyers, Verizon appears to have whitewashed any reference to the Router Study in its advertising while still claiming to have the fastest WiFi among all providers. Verizon's fastest WiFi claim was false before, and it remains false now.

Harm to Cablevision and to the Public

54. Cablevision is being severely and irreparably injured by Verizon's false advertising and deceptive trade practices.

55. WiFi speed is one feature consumers consider when selecting a telecommunications provider, but Verizon's advertising obviously ignores other important elements of WiFi functionality, such as the availability of WiFi outside of the home. Verizon's false ads claiming to offer the "fastest WiFi" are designed to induce existing or prospective Cablevision subscribers to equate WiFi speed with overall WiFi offerings and then select FiOS service on the sole basis of Verizon's falsely advertised superior WiFi speed. Indeed, after falsely claiming to offer the "fastest WiFi available," the "Get FiOS" and "Fast Speed" ads encourage consumers to switch from cable and experience "the incredible difference Verizon FiOS makes."

56. Verizon's false advertisements also discourage prospective Cablevision subscribers from choosing Cablevision as their telecommunications provider.

57. Retaining existing high-speed internet subscribers and recruiting new

subscribers is critical to Cablevision's business.

58. Loss of high-speed internet subscribers would cause harm to other aspects of Cablevision's business. Today, many consumers purchase high-speed internet service as part of a bundled package of television, phone and internet service. Such bundles are referred to as a "triple play" and typically offer consumers substantial savings versus the cost of purchasing internet, television and phone services separately. Thus, if a Cablevision high-speed internet customer switches to a competing telecommunications provider, he or she often will switch to the other provider for television and phone service as well.

59. As demonstrated by the "Fast Speed" and "Get FiOS" ads, Verizon encourages consumers to commit to a two-year contract in order to obtain a guaranteed price. Accordingly, once a current or prospective Cablevision customer has switched his or her service to Verizon, it can be difficult to persuade that customer to switch back to Cablevision.

60. Verizon's false advertising campaign is especially damaging to Cablevision because Cablevision's superior WiFi capabilities have long been a market differentiator for Cablevision. As noted above, Cablevision has made significant investments in its WiFi capabilities, and has accordingly led the market not only in upgrading to the 802.11ac-enabled router, but also in establishing WiFi hotspots for its internet customers and launching Freewheel, the first-ever WiFi-only voice, text and data service.

61. Verizon's false and deceptive conduct also harms consumers. Verizon's false claims are likely to induce consumers to make purchasing decisions and potentially incur costs based on Verizon's false and misleading representations about its WiFi capabilities, as well as Verizon's false claim that the "Router Study" supports its claims.

FIRST CLAIM FOR RELIEF

Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

62. Cablevision repeats and realleges each and every allegation contained above as if the same were set forth at length herein.

63. In connection with Cablevision's services, which are offered in interstate commerce, Verizon has made false and misleading descriptions or representations of fact. These false or misleading statements misrepresent the nature, characteristics, or qualities of Cablevision's services or commercial activities.

64. Verizon's false and misleading statements have deceived, or have the tendency to deceive, a substantial portion of the intended audience, about matters that are material to purchasing decisions.

65. Verizon's false and misleading statements are made in commercial advertising and promotion in interstate commerce and violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

66. Cablevision is likely to suffer, has suffered, and will continue to suffer damages as a result of Verizon's wrongful acts.

SECOND CLAIM FOR RELIEF

Violation of New York General Business Law §§ 349 and 350-a

67. Cablevision repeats and realleges each and every allegation contained above as if the same were set forth at length herein.

68. In connection with Cablevision's services, which are offered in New York State, Verizon has made false or misleading descriptions or representations of fact. Verizon's statements are expressly false, impliedly false, or both. These false and misleading statements misrepresent the nature, characteristic, or qualities of Cablevision's services or commercial

activities in violation of §§ 349 and 350-a of the New York General Business Law.

69. Verizon's false and misleading statements are material to consumer purchasing decisions in the market for high-speed internet services. These statements have caused, or have the tendency to cause, consumer confusion and, upon information and belief, have led customers to purchase Verizon's services instead of Cablevision's services, or to refrain from purchasing Cablevision's services, thereby harming Cablevision.

70. Cablevision is likely to suffer, has suffered, and will continue to suffer damage as a result of Verizon's wrongful acts.

THIRD CLAIM FOR RELIEF

Unfair Competition in Violation of the Common Law

71. Cablevision repeats and realleges each and every allegation contained above as if the same were set forth at length herein.

72. In connection with Cablevision's services, which are offered in interstate commerce, Verizon has made false or misleading descriptions or representations of fact. These statements misrepresent the nature, characteristics, or qualities of Cablevision's services or commercial activities, and, upon information and belief, have led some customers to purchase Verizon services instead of Cablevision services, or to refrain from purchasing Cablevision's services, thereby harming Cablevision.

73. By reason of the foregoing, Verizon has engaged in unfair competition under the common law. Verizon's false, deceptive, and misleading representations are likely to mislead and deceive the public and already have misled and deceived the public.

74. Verizon's conduct is willful, deliberate, intentional, and in bad faith.

WHEREFORE, Cablevision respectfully demands a judgment against Verizon as follows:

A. An order that preliminarily and permanently enjoins Verizon, its officers, agents, servants, employees, attorneys, and all others in active concert or participation with them, from:

1. Disseminating anywhere in the United States the advertisements or the advertising claims described in this complaint, or any advertisement or advertising claims substantially similar thereto; and

2. Claiming, whether directly or by implication, in any advertisement or promotional communication disseminated anywhere in the United States, that:

a. Verizon offers faster WiFi than Cablevision; or

b. Verizon's Quantum Gateway Router has superior capabilities to Cablevision's Smart Router.

B. An order directing Verizon to disseminate, in a form to be approved by the Court, advertising designed to correct the false and misleading claims made by Verizon in its advertising;

C. An order pursuant to 15 U.S.C. § 1116(a) directing Verizon to file with the Court and serve on Cablevision, within 30 days after entry of the injunction, a report, in writing and under oath, setting forth in detail the manner and form in which Verizon has complied with the terms of the Court's injunction;

D. An award of Cablevision's damages attributable to Verizon's false and deceptive advertising, in an amount to be determined at trial;

E. An award of Verizon's unjust gains attributable to Verizon's false and deceptive advertising, in an amount to be determined at trial;

F. A declaration that this is an “exceptional case” due to the willful nature of Verizon’s false advertising, and awarding attorneys’ fees and costs to Cablevision pursuant to 15 U.S.C. § 1117;

G. An award of attorneys’ fees and costs to Cablevision pursuant to Sections 349 and 350 of the New York General Business Law;

H. An award of the costs and disbursements of this action; and

I. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues triable to a jury.

Dated: February 11, 2015

Respectfully submitted,

By: _____ s/ Saul B. Shapiro

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